

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1584 of 1999

in

SPECIAL CIVIL APPLICATION No 2500 of 1987

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SURESHCHANDRA BHAISHANKER JOSHI

Appearance:

MR S.K.PATEL, ASSTT. GOVERNMENT PLEADER for Appellant
NOTICE SERVED BY DS for Respondent No. 1

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE D.P.BUCH

Date of decision: 21/12/1999

ORAL JUDGEMENT

This appeal is filed by the State of Gujarat against interim order passed by the learned Single Judge on November 3, 1999.

Respondent was the original petitioner. He filed the above SCA in the year 1987 for certain reliefs with which we are not concerned in the present proceedings. It appears that Rule was issued and the matter was placed for final hearing in October, 1999. Learned Single Judge passed the following order on October 28, 1999:

"The learned counsel for the respondent is hopeful that by now, the five inquiries pending against the petitioner would have been completed. He prays for time to ascertain this fact from Gandhinagar and to produce the relevant record in respect thereof, if necessary, before this Court. Time prayed for is granted . S.O. to 3.11.1999....."

It was the case of the appellant that, for that, necessary record was required to be gone into. Learned AGP in fact had to scrutinise the record of past ten years . October 28,1999 was Thursday. After scrutinising the necessary record, additional affidavit was dictated on October 30, 1999 i.e. within two days. October 31, 1999 was Sunday. On November 1, 1999, necessary corrections were made in the additional affidavit and on November 3,1999, i.e. the day to which the matter was adjourned, additional affidavit was tendered in Court. Learned Single Judge permitted to file such affidavit. In paras 8 and 9, it was observed:

"8. At this stage, the learned counsel for the respondents requested that affidavit is ready and the same may be taken on record.

9. Though I do not find any justification in this approach of the respondents, but the same is allowed to be taken on record subject to payment of costs of Rs. 5,000/- to the petitioner. For further arguments and dictation of judgment, S.O. to 22nd November 1999. This amount of cost has

to be recovered from the officer concerned who is responsible for this delay in making compliance of the order of this court dated 28th October 1999. This amount of cost has to be paid to the petitioner within a period of three days from today. A copy of this order to be given to the learned counsel for the respondents forthwith."

It was, therefore, submitted by the learned AGP in this appeal that the order directing payment of Rs. 5,000/and that too from the pocket of officer concerned was not justified and could not have been made.

We issued notice on November 22, 1999 for admission as well as for final hearing by making it returnable on December 7, 1999. Respondent was served. Yet, he does not appear. An affidavit is filed in this LPA wherein the above facts have been mentioned. It is also stated by the learned AGP that even in the main matter, no substance was found by the learned Single Judge and accordingly, the main petition came to be dismissed on December 17, 1999.

The question,therefore, is, as to whether the learned Single Judge was justified in passing the order of payment of expenses of Rs. 5,000/- and that too from the personal pocket of the officer concerned.

When affidavit in reply was already filed on behalf of the authorities earlierand the learned Single Judge was of the view that information regarding further development in the cases was necessary and on October 28 , 1999, and time was granted upto November 3, 1999, the Court was not justified in passing the order of costs. Since the respondent does not appear even though served and though notice was issued for admission as well as final hearing and the matter pertains only to payment of Rs. 5,000/- , in our opinion, the appeal deserves to be allowed and is accordingly allowed. LPA is allowed. Order passed by the learned Single Judge directing payment of Rs.5,000/- is hereby quashed and set aside. No costs. No order on civil application.

parekh